IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

RONALD RAGAN, JR.,	)	
	)	
Plaintiff,	)	
	)	
	)	**Case No. 4:18-cv-01010-HFS**
v.	)	
	)	
BERKSHIRE HATHAWAY AUTOMOTIVE, INC.,	)	
	)	
	)	
Defendant.	)	

ORDER

Presently pending before the court is plaintiff's motion for clarification and reconsideration (Doc. 112), and motion for leave to file a document under seal (Doc. 120). Defendant has filed a motion for an order entering final judgment (Doc. 115). Plaintiff seeks relief pursuant to Federal Rules of Civil Procedure 54(b), 59(e), and/or 60(b). (Doc. 113, p. 5).

Without reciting the facts in this case, suffice it to say that plaintiff continues to seek a ruling that his Guest Sheet is copyrightable. The issue has been repeatedly considered, and after careful review of the many briefings submitted in this inordinately lengthy proceeding, I found that the questions solicited on plaintiff's Guest Sheet were not unique, but, rather, appeared to be routine information an automobile salesperson would seek to elicit from a customer visiting a showroom or car lot. Citing, Utopia (Doc. 111, Order dated Mar. 10, 2022). Consequently, defendant's motion for judgment on the pleadings was granted. (Id).

Plaintiff seeks clarification of that Order, claiming that a ruling was not made as to whether copyrightability can be decided as a matter of law as argued by defendant, or is a mixed question of fact and law to be decided by a jury. In the event the ruling was decided as a matter of law,

plaintiff claims that it would be determinative of an appeal to the U.S. Court of Appeals. And, if the ruling was decided as a mixed question, plaintiff seeks reconsideration of the ruling by granting him leave to amend to present new evidence.

As noted above, plaintiff seeks relief in the form of "clarification and reconsideration" under Federal Rules of Civil Procedure 54(b), 59 (e), and/or 60(b).[1] The Federal Rules do not allow for motions to clarify, and, the court must construe the motion according to the type of relief sought. Schoenbaum v. E.I. DuPont de Nemours and Co., 2007 WL 3331291 *1 (E.D.Mo.). Thus, the question of reconsideration pursuant to Fed.R.Civ.P. 60(b) will be addressed below.

Whatever the precise authority, courts do sometimes entertain motions identified as motions for clarification. G2 Database Marketing, Inc. v. Stein, 2020 WL 6484788 * 3 (S.D.Iowa). However, the Eighth Circuit Court of Appeals takes a dim view of motions for clarification that simply attempt to relitigate already decided issues, concluding that they may warrant sanctions for unreasonably and vexatiously multiplying the proceedings and wasting everyone's time. G2, citing, Vallejo v. Amgen, Inc., 903 F.3d 733, 749 (8th Cir. 2018).

There is sound reasoning for the Eighth Circuit's unflattering opinion of clarification motions. Here, plaintiff has not cited any relevant authority, and his reliance on Burton v. Johnson,

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[1] Rule 54(b) provides that any order or other decision, however, designated, that adjudicates fewer than all the claims or rights and liabilities of fewer than all the parties may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities. Avery v. E&M Services, LLC, 2022 WL 4395480 *4 (D.N.D). The exact standard applicable to granting such a motion is not clear, though it is typically held to be less exacting than a motion under Rule 59(e), which is in turn less exacting than the standards enunciated in Rule 60(b). Id.

Fed.R.Civ.P. 59(e) was adopted to clarify a district court's power to correct its own mistakes in the time period immediately following entry of judgment, Innovative Home Health Care, Inc. v. P.T.-O.T. Associates of the Black Hills, 141 F.3d 1284, 1286 (8th Cir. 1998)(such motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment); and, it must be filed within ten days of the entry of judgment. Schoenbaum v. E.I. DuPont de Nemours and Co., 2007 WL 3331291 *2 (E.D. Mo.).

975 F.2d 690 (10th Cir. 1992), is unpersuasive and does not support his argument for clarification.[2] Contrary to plaintiff's contention, the ruling in this case is not ambiguous. The ruling states, quite clearly, that the Guest Sheet was not copyrightable because it was designed for recording information that does not convey information and/or inseparable instructions. (Doc. 111, Order dated March 10, 2022, p. 14). Finding no genuine issue of material fact as to its copyrightability, I held that defendant was entitled to judgment as a matter of law. (Id). Plaintiff's argument to the contrary is therefore disingenuous.

Reconsideration

There is no doubt that the crux of plaintiff's motion revolves around the purported copyrightability of the Guest Sheet, and he seeks reconsideration so that he can amend his pleadings to include the deposition of Peter DeDecker, an automotive sales manager who began his 40-year career in the automotive business with BHA. The record indicates that in a case pending before the District Court for the District of Kansas, *Ragan v. VinSolutions, Inc.,* 20-cv-02222-DDC-JPO, on July 8, 2021, DeDecker was noticed as a witness for defendant. (Doc. 114-2, p. 2). Through the declaration of his counsel, Andrew Grimm, plaintiff claims that much of DeDecker's deposition testimony (taken the day after the ruling in this case) in the Kansas case is "highly important to this case;" primarily due to his long career in automotive sales and training and prior employment with Van Tuyl – which was later acquired by defendant (Doc. 112-1, p. 2). According to plaintiff,

[2] Plaintiff cites Burton v. Johnson, 975 F.2d 690 (10th Cir. 1992), a habeas action, in which the petitioner challenged her state court conviction for first-degree murder. Id, at 691. In an Order dated December 27, 1989, the district court granted the petition, and ordered that the petitioner be released unless a new trial is commenced within 90 days; both parties appealed the court's determination, and litigation continued in the matter. Id, 691-93. The Eighth Circuit ultimately found that the district court's Order was "ambiguous" as to the intended effect of the expiration of the 90-day period, and it was unclear what type of "release" the district court intended in ordering that the petitioner "be released unless a new trial is commenced within 90 days." Id, at 694. Thus, the matter was remanded to the district court for interpretation and clarification of the Order, pursuant to Fed.R.Civ.P. 60(a). Id.

DeDecker acknowledged, among other things, that the Guest Sheet "was a novel, and original, expression of a general idea for a customer-interview sheet." (Id). Contrary to plaintiff's contentions, DeDecker's opinion is not dispositive on the issue of copyrightability of the Guest Sheet; rather, it is just that, the opinion of another employee in the automotive sales venue. Plaintiff also claims that upon learning of the DeDecker testimony in the Kansas case, for months he attempted to schedule DeDecker's deposition, but defendant employed delaying tactics until a day after the ruling was issued in this case. (Doc. 122, p. 13).

Giving plaintiff the benefit of the doubt that the ruling granting defendant's motion for judgment on the pleadings was not a final judgment, plaintiff's motion for reconsideration will not be held untimely. Williams v. Employers Mutual Casualty Company, 845 F.3d 891, 898 (8th Cir. 2017)(a district court decision is not final, and thus not appealable, unless there is some clear and unequivocal manifestation by the trial court of its belief that the decision made, so far as the court is concerned, is the end of the case). And, the motion will be considered as a motion seeking relief under Rule 60(b).

Motions for reconsideration are nothing more than Rule 60(b) motions when directed at non-final orders. Elder–Keep v. Aksamit, 460 F.3d 979, 984 (8th Cir.2006). Rule 60(b) provides that a court may reconsider a prior ruling for one of the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
(4) the judgment is void;
(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.

Rule 60(b) relief is an "extraordinary remedy" that is justified only in "exceptional circumstances," Prudential Ins. Co. of America v. Nat'l Park Med. Ctr., Inc., 413 F.3d 897, 903 (8th Cir.2005), and "[e]xceptional circumstances are not present every time a party is subject to potentially unfavorable consequences as a result of an adverse judgment properly arrived at." Atkinson v. Prudential Prop. Co., 43 F.3d 367, 373 (8th Cir.1994) (in the context of a motion under Rule 60(b)(6) relief will only be granted where the "exceptional circumstances have denied the moving party a full and fair opportunity to litigate his claim and have prevented the moving party from receiving adequate redress." Harley v. Zoesch, 413 F.3d 866, 871 (8th Cir.2005). As such, a Rule 60(b)(6) motion that does nothing more than attempt to reargue issues already decided should be denied. Broadway v. Norris, 193 F.3d 987, 989–90 (8th Cir.1999) (in their motion for reconsideration, defendants did nothing more than reargue, somewhat more fully, the merits of their claim of qualified immunity. This is not the purpose of Rule 60(b)(6).... It is not a vehicle for simple reargument on the merits.).

That is precisely what plaintiff attempts to do here; present cumulative argument – by way of the DeDecker deposition - on an issue that has been repeatedly reviewed by this court, and found to be lacking support for plaintiff's argument that his Guest Sheet does not fall within the "blank form" exception to copyrightability.

Accordingly, plaintiff's motions for reconsideration (Doc. 112) and to seal document (Doc. 120) are DENIED. It is further

ORDERED that defendant's motion to enter final judgment (Doc. 115) is GRANTED. The copyright infringement claim is DISMISSED, and the Clerk of the Court is directed to enter final judgment in this case.

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